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99TH CONGRESS
2d Session

SENATE

REPORT
99-391

H.R. 1529

GERALD M. HENDLEY

ORIGINAL

AUGUST 12 (legislative day, AUGUST 11), 1986.—Ordered to be printed

Mr. THURMOND, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H.R. 1529]

The Committee on the Judiciary, to which was referred the bill (H.R. 1529) for the relief of Gerald M. Hendley, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE

The purpose of H.R. 1529 is to waive the statute of limitations set forth in section 2410(b) of title 28, United States Code, so that Gerald Hendley may file a claim for injuries sustained in an accident allegedly caused by a member of the Air Force.

STATEMENT OF FACTS

In 1969, Gerald M. Hendley, a minor child of a member of the Air Force, was a passenger on a bus involved in an accident. There is some indication that the bus driver, employed by the Air Force, was "horsing around" prior to the accident. According to sketchy Air Force records, it appears the driver was aquitted of criminal charges.

As a result of the accident, Mr. Hendley suffered permanent disfiguring injuries. There is no record that his parents filed a claim with the U.S. Government.

In 1977, after Mr. Hendley reached majority age, he filed a claim with the Air Force on his own behalf. The Air Force rejected his claim on the basis that the statute of limitations precluded its consideration.

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The Air Force opposes this legislation, stating that this would set a precedent for similarly situated individuals. The Air Force also states that, with regard to this specific case, existing Air Force records are not extensive.

After careful examination of the unique circumstances surrounding this situation, the Committee on the Judiciary favorably reports this legislation. A waiver of the statute of limitations would enable Mr. Handley to pursue his claim. The burden of proof is on the claimant to show the negligence of Air Force personnel as well as the extent of personal damage.

The following document was submitted to the Senate with regard to Mr. Hendley's claim:

DEPARTMENT OF THE AIR FORCE,
OFFICE OF THE ASSISTANT SECRETARY,
Washington, DC, April 6, 1984.

Hon. PETER W. RODINO, Jr.,
Chairman, Committee on the Judiciary, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: You have requested the views of the Secretary of Defense regarding H.R. 2050, 98th Congress, a bill "For the relief of Gerald M. Hendley." The Secretary of Defense has delegated to the Department of the Air Force the responsibility for expressing the views of the Department of Defense.

Because of the lapse of time between the incident, October 19, 1969, and the receipt of the proposed legislation, Air Force records pertaining to the substance of this matter are not extensive. The documents we do have indicate that on October 19, 1969, Mr. Hendley, then a minor, was a passenger on the Air Force bus involved in an accident while returning to Goodfellow Air Force Base, Texas, after a scouting activity in the area. The bus was apparently being driven by an airman and there is some indication that the airman was "horsing around" prior to the accident. It appears that criminal charges were brought against Airman Boyd, the driver, in civilian and/or military court(s). While the record is somewhat sketchy, it appears that he was acquitted of the criminal charges. As a result of the accident, Mr. Hendley suffered some serious and permanent injuries and disfigurement. Mr. Hendley filed an administrative claim in November 1977 and refiled it in June 1979; it was ultimately denied on February 12, 1981. Mr. Hendley subsequently filed suit in U.S. District Court, Southern District of Mississippi (Southern Division) in August 1981, which was dismissed with prejudice on August 12, 1982.

The filing of the administrative claim and of the District Court suit were untimely as having exceeded the time allowed by the applicable statute of limitation. Virtually all private relief bills have some special factual situation which is often linked to hardship or a wrong of one sort or another, some more compelling than others; this case is no exception. Be that as it may, the Congress, for good and sound reasons, has established the rules for the time period in which claims must be filed and law suits must be brought. This case establishes the essential validity of a statute of limitations. To waive the statute in this case would not only be to treat Mr. Hendley differently from other persons similarly situated, it would be to

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give him extraordinary preferential treatment. Accordingly, the Air Force on behalf of the Department of Defense, opposes the legislation.

This report has been coordinated within the Department of Defense in accordance with procedures prescribed by the Secretary of Defense.

The Office of Management and Budget advises that, from the standpoint of the administration's program, there is no objection to the presentation of this report for the consideration of the Committee.

Sincerely,

TIDOR W. MCCOY,
Assistant Secretary of the Air Force
(Manpower, Reserve Affairs and Installations).

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